

RESPONSE OF THE COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS TO THE PROPOSED SPECIAL EDUCATIONAL NEEDS AND DISABILITY (SEND) BILL

1. Introduction

- 1.1 The Council for Catholic Maintained Schools (hereafter referred to as Council) is the advocate for the Catholic Maintained schools' sector in Northern Ireland. CCMS supports the management of Catholic Maintained schools through boards of governors. As the largest employer of teachers in Northern Ireland CCMS plays a central role in supporting teachers, for example, in working parties such as the Independent Inquiry into Teacher Pay and Conditions of Service.
- 1.2 CCMS supports trustees in the provision of school buildings and governors and principals in the effective management and control of schools. CCMS also has a wider role within the Northern Ireland education sector and contributes with education partners to policy on a wide range of issues such as curriculum review, selection, pre-school education, pastoral care and leadership.
- 1.3 Council welcomes the opportunity to respond to the recommended amendments to the 1996 order and subsequent 2005 order in relation to provision for children who have special educational needs or disabilities. While recognising the need for change to ensure consistent and effective provision across all schools, whether mainstream or special, it is also very aware of the dedication of teachers, boards of governors and education and library boards (until 31 march 2015) in ensuring excellence in provision for children with special educational needs.

2. RESOURCES

- 2.1 Council is mindful of the resource implications of the proposals contained in this bill, and would emphasise that any support offered for additional actions and responsibilities is predicated on the understanding that additional resources will be made available to help implement them. Schools often report that waiting times for children with additional needs to be seen by educational psychologists can be overly long, and that many children do not have their needs adequately met while they are awaiting a decision on a statement of special educational needs. The introduction of the proposals contained in this bill will require additional personnel to be available to facilitate work to be carried out within a much tighter timeframe if the needs of children are to be met appropriately.

3. CLAUSE 1 Duty of Authority to have regard to the views of the child

- 3.1 Council strongly supports this addition to strengthen the rights of the child as detailed in the United Nations Convention on the Rights of the Child (UNCRC) which states that children with the capability of forming views on any matters affecting them should have all the necessary support and opportunities to do so.

4. CLAUSE 2 Duty of Authority to publish plans relating to its arrangements for special educational provision

- 4.1 Council agrees with the details included in this section regarding the publication, content, review, revision and consultation on an annually published plan setting out the arrangements or proposed arrangements for the provision of special educational needs. A published plan that conforms with these requirements would provide relevant details for all concerned with special educational needs provision, including parents/carers and children, and would facilitate understanding of the role of the Authority and its commitment to special educational needs provision.
- 4.2 However, Council is concerned by the fact that regulations regarding the publication of such a plan, as outlined at 2 (7), have not yet been determined and are subject to the development of subordinate legislation. While the principles described within paragraphs 1 to 6 have the potential to increase effectiveness, clarity and openness within the Authority's provision for SEN, it would be necessary for Council to be aware of the regulations for the form and content, procedures to be followed and persons to be consulted, before fully endorsing this clause.

5. CLAUSE 3 Duties of Boards of Governors in relation to pupils with special educational needs

- 5.1 Council supports the proposed change to wording in sub-paragraph (b) in article 8 (1) of the 1996 order as it allows for a wider group of adults, including support workers, classroom assistants and senior school staff to be aware of the needs of children with SEN, and therefore be better able to support them. Similarly, Council approves of the proposed change to wording in sub-paragraph (b) in recognition of the fact that awareness does not directly imply required actions.
- 5.2 The insertion of sub-paragraphs (d), (e) and (f) is considered by Council to be appropriate and in the best interests of children with SEN. It should be noted that those arrangements described at (d) and (e) are currently practised by schools although using the current terminology of IEP and SENCO. While the changed names, as first outlined in the 2009/10 consultation on 'Every School a Good School – The Way Forward for Special Educational Needs and Inclusion', are considered to more accurately reflect the required plan and role respectively, clarification is needed on any changes required to either in light of the new order. It has been suggested that current IEPs do not adequately meet the needs of all children with SEN, and the Education and Training Inspectorate (ETI) comment frequently in reporting on school inspections about the lack of depth and clarity regarding outcomes in IEPs. Council would recommend that relevant advice, training and support be provided for both school staff and curriculum advisory personnel to ensure that the changed names are reflective of changed, improved provision. Currently many teachers do not feel that they have been adequately trained or resourced to deal with SEN (GTCNI survey 2010), so it is imperative that relevant and targeted, detailed support is provided to ensure all teachers and support staff can deal proficiently with SEN support for children.

- 5.3 Council agrees that the inclusion of sub-section (f) is necessary to ensure that parents and children who are over compulsory school age are aware of their right to settle disagreements about SEN decisions and how to access information that will help them to do this.
- 5.4 The inclusion of paragraphs (2A) and 8ZA after paragraph (2) provides for the possibility of requirements relating to the duty of a board of governors to notify the Authority of relevant changes, to ensure that learning support co-ordinators(LSC) have prescribed qualifications and/or experience and to undertake other functions relating to LSCs. Council recognises the need for the first two functions, and would support their inclusion as requirements. However, more clarity is required on the possible scope of the 'other functions' before Council could make any comment, other than that we cannot support such a vague proposal, especially in recognition of the already heavy workload of governors who voluntarily give up their time and energies to support schools.

6. CLAUSE 4 Duty of Authority to request help from health and social care bodies

- 6.1 Council supports the change of the word 'may' to 'shall' in article 14, paragraph 3 as this provides a requirement on the Authority to do what is in the best interests of children, and allows for greater consistency across all schools and sectors. The changed wording in paragraph (3) is accepted as being more relevant to the named organisations. Council would seek clarity on whether or not there is a corresponding duty on the Regional Health and Social Care Board and health and social care trusts to provide support when it is requested and when the need for such support is agreed as being supportive of the child's education. In such situations, where agreement on support is reached, there needs also to be agreement on such issues as funding, accountability for outcomes, communication with parents and children and the possibility of future interventions to further support the child. Council is unsure of the capacity within the named organisations to offer relevant support that will positively affect a child's educational outcomes. It is imperative, for the success of the recommendation and for the education of children with special educational needs, that health and social services bodies and educational bodies are facilitated in engaging in worthwhile inter-agency work when the needs of a particular child would indicate the need for such collaboration.

7. CLAUSE 5 Assessment of needs: reduction in time limits

- 7.1 Council does not support the proposed reduced time limits. While such reductions may support the work of the Authority in speeding up the assessment process it is not supportive of the parent's right to appeal either the assessment proposed by the Authority at the request of a responsible body or the non-assessment when assessment has been requested by the parent. Parents require time to access the information they require, including specialist reports, to help them with the appeals process. Regardless of the fact that 21 days would be insufficient time for the majority of parents, a negative message regarding support for parents would be delivered by this reduced appeal time limit. The role of parents in

education has been increasingly focused on over the past number of years by the Department of Education and there is a need to ensure that parents are supported as much as possible in decisions regarding their children's education. A negative reduction in time limits for appeal that will cause stress and anxiety will to many parents will leave parents feeling unsupported and even marginalised within the decision making process.

8. CLAUSE 6 Appeal following decision not to amend statement following review

- 8.1 Council considers it appropriate that the inclusions recommended to Article 19 be made as they afford support to parents and children over compulsory school age in appealing a decision regarding non-amendment of a statement. Giving parents and children over compulsory school age access to written reasons, as well as to a copy of any advice given to the Authority in relation to the decision, may well lead to a better understanding about such matters, an acceptance that decisions have been made in support of the child and, therefore, to a low number of appeals. Council is aware of the excellent work of the Dispute Avoidance and Resolution Service (DARS) that is currently available to parents who have concerns about assessment or provision for their children's special educational needs. This new right of appeal is supported as being necessary to the inclusion of parents in decisions about their children's education, and to ensuring that all decisions are relevant to a child's needs.

9. CLAUSE 7 Child under 2 – appeals against contents of statement or failure to make statement

- 9.1 Council supports the recommended inclusions to article 21 in relation to children under two years old. The requirements to provide the same information and support to parents, and the same right of appeal regarding assessments, as is provided to parents of children in statutory education conforms to the Minister's stated objectives (May 2012) of ensuring early identification and intervention, and also reinforces the fact that the new framework is, as described by the Minister, 'inclusive' in that it gives equal rights to parents of all children with special educational needs. Council would recommend that the duty on the Authority to serve a notice within the prescribed period should be obligatory, as it is for such a notice to be served to parents of children attending schools (previous clause).

10. Appeals against decisions under article 21

- 10.1 Support is offered for these inclusions for the same reasons as stated in the above paragraph.
- 10.2 Council recognises the need for the substitutions and additions to Article 18A to support the previous changes recommended within the same Article.

11. CLAUSE 8 Mediation in connection with appeals

- 11.1 The extension to Article 21B to allow for mediation support for those seeking to appeal, and placing an obligation on the Authority to provide for and participate in the mediation, is supported by Council as it offers a less stressful way for parents to understand reasons for decisions made by the Authority and by BOGs, and may reduce the number of appeals made. The definition of an independent person is not clear, with the only descriptor being that a person is not considered independent if he or she is employed by the Authority. A parent's perception may well be that a person contracted by the Authority to provide mediation is, in fact, employed by the Authority, and he or she may not trust the objectivity of the mediator, thus negating the mediation process. Council would suggest that more consideration be given to ensuring that mediation is conducted with transparent objectivity, with the possibility of a separate mediation service being utilised that has no ties to the Authority.

12. Information and advice as to mediation in connection with certain appeals

- 12.1 Council understands, from the list of circumstances included in the mediation process and from those specified as excluded, that mediation is provided only for disagreements between parents and boards of governors about the exercise of the BOG function or the provision a BOG makes for the education of children with SEN, and for appeals against the Authority's decisions regarding assessments and statements. The areas listed under 21C (2) relate to decisions made by the Authority, and while these can be appealed against no mediation is offered. Council would support these inclusions in recognition of the fact that mediation may support parent and BOG relationships and help parents to have a better understanding of the role of the BOG and the Authority and decisions they make. It may also ensure that BOGs recognise the high degree of accountability they have for decisions made regarding SEN.
- 12.2 While Council considers mediation to be useful it has reservations about making it compulsory for all parents who are considering an appeal to the Tribunal until the processes and details have been clearly established and agreed by all interested parties. Parents would need to be aware of what mediation would entail, for example, practicalities such as time, finances, location, persons permitted to attend meeting. If the service is to have credibility there needs to be transparency about its objectives, the power it holds, the qualifications of mediators, how it is funded and why it is necessary. Parents may well regard mediation that is time consuming as another stumbling block to ensuring that their children receive the best education possible. If mediation is to work it needs to be timely so that the appeal process is not unduly delayed for parents, and parents need to be assured that it will be speedy, efficient and worthwhile.
- 12.3 Statements about what provision may be made in the future regarding mediation, including prescribed steps following the conclusion of mediation and the training, qualifications and experience of mediation advisers and mediators may provide a greater incentive for parents

to engage with this service. It would be helpful if such decisions could be made as soon as possible.

13. CLAUSE 9 Rights of child over compulsory school age in relation to special educational provision

- 13.1 Council supports the rights of children over compulsory school age to be able to exercise rights regarding their education previously held only by their parents, and considers the provision of any required assistance or support to be appropriate in enabling this. It is also recognised as relevant that, where there is a determination that the child lacks capacity to exercise these rights, the parents may do so on his or her behalf. Council is concerned that there are a number of areas yet to be decided in relation to this addition, for example, the regulations that will make provision for establishing a child's capacity. However, it is satisfied that the fact that regulations made under this section are not subject to parliamentary control may result in a more timely resolution of these matters. It is also of concern to Council that this new right afforded to children over compulsory school age will also be a responsibility on those same children. A right, by definition, is an entitlement and not an obligation. Council would consider it more appropriate for children to be given the opportunity to either access this new right themselves or to allow parents to continue to exercise it on their behalf if that is their choice.

14. CLAUSE 10 Rights of child over compulsory school age in relation to disability discrimination claims

- 14.1 Comments made in the preceding paragraph regarding Clause 9 also apply to the proposal to allow children over compulsory school age with disabilities the right to pursue claims about discrimination.

15. CLAUSE 11 Appeals and claims by children: pilot scheme

- 15.1 Council, while understanding the need for children to be more knowledgeable and aware of issues related to their education, is not satisfied that such a scheme would be beneficial to children, their parents, schools, BOGs or the Authority. However, in the interests of gauging the worth of allowing children who have not yet reached the upper limit of compulsory school age to make appeals and claims regarding their education in relation to SEN, Council would support a small- scale pilot subject to the provisions yet to be established, cited at sub-paragraph (3). A two year duration for such a pilot is deemed appropriate.

16. CLAUSE 12 Appeals and claims by children: follow-up provision

- 16.1 In the event that the pilot scheme referred to in Clause 11 is successful, and establishes that there is merit in allowing children over a certain age (yet to be determined) to make claims and appeals, Council would support the continuation of the arrangements in place during the pilot, or any necessary amendments as identified during the pilot.

17. CLAUSE 13 Definition of “child” for purposes of special education

- 17.1 Council fully supports the amendment to Article 3 that allows a young person for whom a statement is maintained to continue to be considered a child until the end of the school year in which they turn 19, rather than to the end of the school term after their 19th birthday as currently allowed for.

18. CLAUSES 14, 15 and 16

- 18.1 Council accepts the definitions provided in Clauses 14 and 16. Council has considered Clause 15, which gives details of the sections of the act that will come into effect on the day after Royal Assent is given. It has noted that very little will come into effect, and that the vast majority of the proposals still require legislation or are yet to be determined. It is a genuine concern of Council that so much has yet to be finalised in an act that has such important ramifications for the education of children with special educational needs or disabilities.
- 18.2 It has also been noted that no time-frames have been given. It would be extremely helpful to all concerned in education, including children and parents, if there could be some indication of earliest and latest start dates for the enactment of the proposals outlined.

19. OMISSIONS

- 19.1 Council would be keen to ascertain when the revised three stage statutory Code of Practice for SEN will be finalised and made available. This revised Code will be necessary for schools, the Authority and Boards of Governors in their respective roles with regard to SEN provision.
- 19.2 In his presentation to the Assembly in May 2012 the Minister stated that one of the proposed changes in legislation would be to ensure that PEAG funded pre-school settings would be supported in providing for children with SEN, and that such settings could be named on a child’s statement of special educational needs, to be renamed Co-ordinated Support Plan. The current proposals make no reference to this. Council would be keen to ascertain why there has been no action on this proposal as it considers pre-school education to be essential to a child’s development, and would support capacity building in PEAG funded settings which are currently falling behind their statutory counterparts in terms of training and support. It would be supportive of parents if they were satisfied that PEAG funded settings could cater for their children’s SEN, and such support would facilitate the good start to education that all children are entitled to.
- 19.3 Council is concerned that, while school age children, children over compulsory school age and children under two have been referred to in the proposals, there is no reference to pre-school age children. While those who attend nursery schools or units may be regarded as being included in the clauses that relate to boards of governors and schools, those who attend PEAG funded or private pre-school settings have been ignored. Council regards this

as a major flaw in the proposals, which seek to be inclusive and to support early identification and support.

20. CONCLUSION

- 20.1 Council recognises the potential contained within the proposals to bring about improvements in SEN provision in schools. As always, there are conditions that will affect how successful the outworkings of these proposals will be. These include capacity building within schools and support services, capital investment in both training and resources and commitment from all involved to ensure that child with SEN and disabilities have the best education possible.
- 20.2 It is apparent that the child is firmly at the centre of the recommended amendments and additions to the 1996 Order and the 2005 SEND Order. Council endorses the objectives outlined as underpinning these current proposals, especially ensuring that the support needs of a child are met. However, the objective to reduce bureaucracy may not be realised even with substantial training and support for relevant personnel in schools and support agencies.

21. ORAL EVIDENCE

- 21.1 Council **would/would not** wish to be considered to give oral evidence.
Delete as appropriate